IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7682 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADARSH COOPERATIVE HOUSING SOCIETY LTD - Petitioner(s)
Versus
JUNAGADH MUNICIPAL CORPORATION - Respondent(s)

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Appearance :
MR ANSHIN H DESAI for Petitioner(s) : 1,
MR SANDEEP N BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 02/05/2006

ORAL JUDGMENT

Rule. Shri Sandeep Bhatt, learned advocate waives service of Rule on behalf of respondents. With the consent of learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Commissioner, Junagadh Municipal Corporation dated 1.3.2006 by which the petitioner is directed to pay the amount for the plots/land in question considering the market value of the property/land in question at Rs. 2800 per sq.mtr. On the basis of the valuation fixed by the Valuation Committee of Junagadh Municipal Corporation in their meeting held on 21.12.2005 and the petitioner is directed to pay 90% of the valuation, i.e., Rs. 50,27,400.

3. Shri Anshim Desai, learned advocate appearing for the petitioner has submitted that by Resolution No. 58 dated 23.1.1989 the land in question came to be allotted in favour of the petitioner and he was directed to pay the amount considering the market price of the land at Rs. 110 per sq.mtr., on the basis of the valuation determined by the Town Planner/Town Planning Valuation

Committee, Junagadh. It is further submitted that thereafter by Resolution No. 170 dated 1.6.1991 of the Timbawadi Gram Panchayat the petitioner was directed to pay 10% of the amount which the petitioner deposited on 3.7.1991. It is submitted by the petitioner that inspite of the aforesaid allotment in 1989 and actual order/ Resolution of 1991 and payment of 10% of the said amount on 3.7.1991 by the petitioner the possession of the plots in question was not handed over to the petitioner due to encroachment and after the petitioner approached the Corporation the impugned order came to be passed. It is submitted that the Commissioner has materially erred in directing the petitioner to pay the amount of plots in question considering the market price of the land in question which was prevailing as on 21.12.2005, i.e., Rs. 2800 per sq.mtr. Relying upon the judgment of this Court in the case of ***Jayantibai Naranbhai Amin and Others Vs. State of Gujarat and Others,*** reported in ***AIR 2002 Gujarat 193,*** Shri Desai has submitted that the market price is required to be considered which was

prevalent at the time of making application and therefore it is requested to allow the present Special Civil Application and quash and set aside the order passed by the Commissioner, Junagadh Municipal Corporation which directs the petitioner to pay the amount towards the land in question considering the market price of the land at Rs. 2800 per sq.mtr., then prevailing as on 21.12.2005. He has submitted that the market price ought to have been considered of 1989 and at least as on 1.6.1991, the date on which the Timbawadi Gram Panchayat passed the resolution directing the petitioner to pay 10% of the amount.

3. Learned advocate Shri Sandeep Bhatt appearing on behalf of the respondent Corporation has tried to support the order passed by the Commissioner by submitting that in view of the fact that when the Corporation is passing the order in the year 2006, the Commissioner is justified in directing the petitioner to pay the amount for the land in question considering the market price prevailing as on date

which was arrived at on the basis of valuation done by the Valuation Committee of the Nagarpalika. It is, therefore, requested to dismiss the present

Special Civil Application and/or to pass appropriate order.

4. Heard the learned advocates appearing for the parties. It is not in dispute that the Timbawadi Gram Panchayat passed a Resolution vide Resolution No. 58 dated 23rd January 1989 resolving to allot the plots in question to the petitioner society as per the valuation of Rs.110 per sq.mtr., done by the Town Planning Valuation Committee of Junagadh. It is also not in dispute that an appropriate resolution thereafter came to be passed on 1.6.1991 by the Timbawadi Gram Panchayat accepting the offer and finalising allotment of land in question in favour of the petitioner society on payment of 10% of the valuation/price of the land in question and such amount was deposited by the petitioner on 3.7.1991. It appears from the record that due to encroachment

on the land in question, possession of the land could not be given to the petitioner. In the meantime, the land in question came to be included within the local limits of Junagadh Municipal Corporation pursuant to which the petitioner approached the Commissioner of Junagadh Municipal Corporation for allowing them to pay the balance amount, i.e., 90% of the total amount. It is required to be noted that as such the land was already allotted to the petitioner in 1989 and the final order came to be passed in 1991 and therefore so far as the Municipal Corporation is concerned, no further order of allotment was required to be passed, and even if some order was required to be passed with regard to payment, the Corporation is not justified in directing the petitioner to pay for the land in question as per market price as on today as no order with regard to fresh allotment was required to be passed. At the most, considering the fact that the final order came to be passed in 1991 subsequent to passing of first resolution in 1989, the Corporation could have insisted to pay the price of the land in question considering the market price

prevailed in 1991 and 1992. At this stage, decisions of this Court are required to be referred to, namely in the case of *Jayantibai Naranbhai Amin and Others Vs. State of Gujarat and Others* (Supra); and in the case of ***M.H. Wadia Vs. State of Gujarat***, rendered in ***Special Civil Application No. 15700 of 2004*** on 4.2.2005, and considering the aforesaid decisions, the Commissioner, Junagadh Municipal Corporation was not justified in directing the petitioner to pay the price of the land in question considering the market price prevailed as on 21st December 2005 at Rs. 2800 per sq.mtr. Under the circumstances, the order passed by the Commissioner of Municipal Corporation is required to be quashed and set aside and the petitioner requires to be directed to pay the market price of the land in question which was prevailing as on 1.1.1992 to which Shri Desai, learned advocate has expressed his consent on behalf of the petitioner. For that purpose, the matter is required to be remanded to the Commissioner of Junagadh Municipal Corporation for passing appropriate order for determining the price of the land in question

considering the market price prevailed as on 1.1.1992 after getting necessary valuation done the Valuation Committee.

5. For the reasons stated above, the petition succeeds. The impugned order dated 1st March 2006 passed by the Junagadh Municipal Commissioner is hereby quashed and set aside and the matter is remanded to the Junagadh Municipal Corporation for the purpose of determination of market price then prevailing as on 1.1.1992 of the land in question after giving opportunity of hearing to the petitioner. The aforesaid exercise be done within the period of 6 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

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